No. .....

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

JOHN H. WISE, as Collector of the Port of San Francisco, State of California,

Appellant,

vs.

SOUTHERN PACIFIC COMPANY, Importer of Certain Creosote, Merchandise, etc.,

Appellee.

Appellee's Brief.

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Filed February ..... , *1898.*

..... *Clerk.*

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The statement of the case contained in appellant's brief is not controverted by appellee.

The paragraphs of the Tariff Act of 1894 (28 U. S. Stats. at Large, p. 511), concerning which the assessment of duty upon the merchandise in question has aroused the present controversy, provide as follows:

> "60. Products or preparations known as alkalies, alkaloids, *distilled oils*, essential oils, expressed oils, rendered oils, and all combinations of the foregoing.

> and all chemical compounds and salts, not specially provided for in this Act, twenty-five per centum ad valorem."

Paragraph 443 of Section 2 of the same Act exempting from duty certain imported articles, provides as follows:

> "443. Coal tar, crude, and all preparations except medicinal coal-tar preparations and products of coal tar, not colors or dyes, not specially provided for in this Act."

It is under the latter paragraph that appellee claims its exemption from the payment of duty on the importation in question which is admittedly known as "dead oil" or "creosote oil."

The questions involved can be most clearly presented to the Court by calling its attention at the outset to the findings and conclusions of the Board of General Appraisers as contained in the written opinion filed by such board.

The opinion of the board was delivered by General Appraiser Tichenor, and is as follows (Tr., p. 44):

> "The merchandise here in question was imported in casks, and is described in the invoices as 'liquid creosote.' It was assessed for duty at 25 per cent ad valorem under the provisions in paragraph 60, Act of August 28, 1894, for 'distilled oils,' and is claimed by the contestants to be exempt from duty under paragraph 443 of said Act.
>
> "We find as facts from the testimony of Dr. Haydn M. Baker, chemist in the laboratory attached to the Appraiser's office at New York, to whom samples of the merchandise were submitted for chemical determination, and from knowledge acquired in the consid-

eration of other cases relative to merchandise of the same general character

"(1) That the merchandise in question is a liquid substance of a dark brown color and tarry odor, of the specific gravity of 1.05392 and 1.05028, and is known generally in commerce as dead oil and creosote oil.

"(2) That it is derived from coal tar by distillation, and is a distilled oil. Its chief constituents are naphtaline and its derivatives along with the basic oils parvoline, coridine, collidine and leucoline and bitumens dissolved therein, together with five per cent of crude phenol of the carbolic and cresylic acid types.

"It is understood that the protestant contends that the merchandise is not dutiable as assessed, upon the ground that it is not commercially known as distilled oil. It is not necessary that it should be so known to bring it under that provision. The various oils known to commerce are distinguished in trade by arbitrary names, such, for example, as olive oil, croton oil, lemon oil, cod liver oil, castor oil, aniline oil, etc., and are not known in commercial sense as 'distilled oils,' 'essential oils,' 'expressed oils,' or 'rendered oils.' These terms are technical, and are used to distinguish the different oils according to the method of their production. It is not disputed that the article in question here is obtained by distillation, and hence, in the sense of the tariff, is known as distilled oil.

"The provision for distilled oils in paragraph 60 is more specific than the general provision for preparations and products of coal tar in paragraph 443 of the Act.

"This view is in harmony with the doctrine of the recent decision of the United States Circuit Court of Appeals for the Second Circuit in the case of Matheson & Co. vs. The United States (71 Fed. Rep., 394), to the effect that the provision for 'acids' in paragraph 473, Act of Oct. 1, 1890, is more specific than

the general provision for all preparations of coal tar not colors or dyes in paragraph 19 of the Act."

It will be observed that the Board of General Appraisers found that the merchandise, which forms the subject of this controversy, is a product of coal tar, and also that it is a distilled oil; that, taken as a whole, the substance has a specific gravity greater than that of water, and the conclusion of the board that the same is subject to duty seems to rest upon the proposition that the provision in paragraph 60 of the Tariff Act making products and preparations known as distilled oils subject to duty is more specific than the general provision found in paragraph 443 of the Act, by which products of coal tar are placed upon the free list.

The opinion of the Circuit Court is to be found at page 53 of the transcript. Its findings of fact and conclusions of law are to be found at page 46 of the transcript.

From the evidence taken before the Board of General Appraisers, and from the evidence adduced at the trial, the Circuit Court found:

"VI.

"That the merchandise comprising the importation involved in this application and petition for review was, on and before the said 19th day of March, 1895, and now is, known in trade and commerce as 'creosote oil' or 'dead oil,' and was and is a product of coal tar, obtained therefrom by fractional distillation.

"VII.

"That said merchandise was not, nor is it, a product or preparation commonly or commercially or

chemically, or otherwise, known as a distilled oil, but was and is a product of coal tar, not a color or dye, and not otherwise specially provided for in said Act."

Two points are made by the appellant, under either or both of which he asks to have the decision of the Circuit Court reversed.

These points will be taken up in their order.

The first point raised by appellant is as follows:

"Products of coal tar are not free of duty under paragraph 443 of the Tariff Act of August 27, 1894."

In support of this point appellee asks to have paragraph 443 of the Act above quoted construed as if it read that crude coal tar and all *preparations* of coal tar not specially provided for in the Act were to be admitted free of duty; that medicinal coal tar preparations *and products of coal tar*, and colors and dyes were not to be admitted free of duty, but must be included within some of the schedules of duty which precede the list of articles which are admitted free.

Such a construction of the paragraph seems somewhat strained, to say the least. However, assuming for the sake of the argument that it is doubtful what is meant by the language used, whether products of coal tar are to be admitted free or are to pay duty (and this is the most that can be urged in favor of appellant's construction), the Court is bound to resolve the doubt in favor of the importer.

"Duties are never imposed on the citizen upon vague or doubtful interpretations."

Powers v. Barney, 5 Blatch., 202.
U. S. v. Isham, 17 Wall., 496-504.
Adams v. Bancroft, 3 Sumner, 384.
Hantranft v. Wiegmann, 121 U. S., 609.

I.

The second point raised by appellant is as follows:

> "The merchandise in controversy *is known as a distilled oil*, as well as a product of coal tar; and even if embraced within the terms of paragraph 443 is, nevertheless, more properly provided for under paragraph 60 of the Tariff Act referred to."

Turning to the evidence contained in the transcript, there is not a witness who testified that the substance known to commerce as "dead oil" or "creosote oil" ever was or is *known* commonly or commercially or chemically, or otherwise, as a distilled oil.

If the language of the Act is read in connection with the evidence, it will be seen that the words "known as" employed in the Act and applied to distilled and other oils was used designedly by the law-makers.

There is no substantial conflict in the evidence as to the real nature—the real constituents of "dead" or "creosote" oil. It is described by Professor Price, a witness for the importer, as a very complicated compound. He says (Tr., p. 71): "The composition of creosote is very complicated. It contains naphtaline, carbolic and cresylic acids, quinoline and various other complicated compounds." And Dr. Baker, the Government chemist at the port of New York, and upon whose analysis the decision of the Board of Appraisers mainly rests, describes it (Tr., p. 14) as a substance "having a specific gravity of 1.05392,

and contains approximately 5 per cent of carbolic and cresylic acids, the remaining 95 per cent being made up of the usual constituents of the ordinary dead oils of commerce, consisting almost wholly of naphtaline and its derivatives, with the basic oils parvoline, collidine, corridine, leucoline and bitumens dissolved therein." And he says further: "The merchandise as a whole is an oily body and complicated mixture of complex chemical compounds, and also a product of coal tar eliminated by distillation."

Dr. Kern, for the Government, is the only witness who testifies that this merchandise may be classed as a distilled oil, but he also admitted that it is in fact a product of coal tar and may be so properly described. Attention is called to a few questions asked this witness upon that point, and his answers thereto (Tr., p. 136):

> Q. Then you say, doctor, that this substance is, in fact, a product of coal tar?
>
> A. Yes, sir; it is a product of coal tar.
>
> Q. And it would not be improper to describe it as such, speaking of it generally—to say that this substance in controversy is a product of coal tar?
>
> A. This is a product of coal tar, yes.
>
> Q. Why do you say it is a distilled oil?
>
> A. On account of its being obtained by distillation * * *
>
> Q. You say it is known as a distilled oil because it is obtained by distillation. Is that the only reason you can give?
>
> A. Yes, sir.
>
> Q. That is the only reason you have?
>
> A. It is known in the market as that.
>
> Q. It is known in the market as a distilled oil?
>
> A. As a creosote oil.

Q. As a distilled oil?

A. It is obtained by distillation.

Q. It is known in the market as creosote oil or dead oil, is it not?

A. Yes, sir.

Q. *Is it known in the market as a distilled oil?*

A. Well, no; I guess not.

The results obtained by distilling coal tar can be more readily understood by referring to the testimony of Professor Price (Tr., p. 69), which is substantiated by all the other witnesses in the proceeding, and is as follows:

Q. Is this substance which you have analyzed, and which is contained in the bottle marked "Petitioner's Exhibit C," known as a distilled oil in chemistry to the trade?

A. No, sir.

Q. What is that substance, Professor?

A. That is one of the products of coal tar, produced by the process of distillation—fractional distillation.

Q. Could you name some of the products of coal tar?

A. Coal tar is one of the products of the distillation of coal in the manufacture of common lighting gas. The first product of distillation is a tarry material containing more or less water. The watery solution contains the ammonia. This is allowed to settle, and the tarry material is subjected to the process of fractional distillation. The first products of distillation which come over are light oils, benzole and naphtha. The second product, on pushing the distillation still farther and increasing the temperature, would be carbolic acid, and naphthalene to a certain extent. The third product in the process of distillation, after further increasing the temperature, would be what is called creosote, which is a complex compound. There then would remain a semi-liquid mass in the retort. If the distillation is

pushed still further, there is produced what is called anthracene. There then remains in the retort pitch. Occasionally that pitch is subjected to a further distillation and a coke remains. These, roughly speaking, are the four or five products of coal tar when subjected to the process of fractional distillation, or destructive distillation, as it is sometimes called.

Q. You used the expression "light oils," Professor, when you started off with benzole and naphtha.

A. Yes, sir.

Q. Is it not true that when you apply heat to coal tar that there is not a single product that comes over from the retort except coke, that chemists do not call, by way of description, oil?

A. Yes, sir; they are all called oils.

Q. They call them all oils?

A. Yes, sir; they call them all oils.

Q. What kind of a substance is naphthalene?

A. Naphthalene is a white, solid substance.

Q. When it cools it becomes white?

A. It separates out from the oil upon cooling.

Mr. Knight.—Q. When you speak of its being a "solid substance," I suppose you mean solid at ordinary temperature?

A. Solid at ordinary temperatures, yes, and when free from any of these other mixtures, like carbolic acid.

Mr. Lake.—Q. Benzole will hold naphthalene?

A. Benzole will hold naphthalene in solution.

Q. Carbolic acid is an acid, is it not?

A. Yes, sir.

Q. That, also, is called an oil, is it not?

A. Yes, sir; it is called carbolic oil.

Q. You also call benzole an oil, do you not?

A. Yes, sir; a light oil.

Q. And naphtha you also call an oil?

A. Yes, sir.

Q. And when crude anthracene crystals come over, on the application of heat up to 270 degrees Fahrenheit, you call that an oil also?

A. Yes, sir.

Q. You also call sulphuric acid an oil?

A. Yes, sir. It is sometimes called oil of vitriol?

Q. Are you speaking of the term as used chemically or commercially?

A. I am speaking commercially. Coal tar compounds are all called oils. When describing their manufacture we simply state that when it is heated up to a certain temperature certain light oils will come over from the retort; and as the temperature is increased the next light oil will pass over. And so on in the process, by increasing the temperature, until the heavier or "dead" oil passes over, which is the creosote of commerce.

Q. With which you are familiar?

A. Yes, sir.

Q. Is the creosote of commerce known as a distilled oil, or as a product of coal tar?

A. Well, it is called creosote oil, and it is a product of the destructive distillation of coal tar.

Q. But is it known in commerce as a distilled oil?

A. No, sir; it is not.

Q. How would you, as a chemist, describe it?

A. I would describe creosote as one of the products of the destructive distillation of coal tar, and that it is itself a very complicated compound, from which you can separate innumerable substances by further treatment with alkalies and acids, and subjecting it to fractional distillation. It essentially consists, of course, of the hydrocarbon oils and carbolic acid.

Q. And anthracene?

A. And anthracene also; yes, sir.

Q. When you say the hydrocarbon oils, you include anthracene and carbolic acid?

A. Yes, sir. The composition of creosote is very complicated. It contains naphthalene, carbolic and cresylic acid, crinoline and various other complicated compounds.

Q. This creosote, of which you are now speaking, is the same substance that is contained in this bottle, "Petitioner's Exhibit C?"

A. Yes, sir.

Thus it will be seen that the primary distillates of coal tar, including the merchandise in question, are termed oils, the residuum being pitch or coke.

Attention is also directed to the testimony of the witnesses Price (Tr., p. 68), Miller (Tr., p. 99), and Kern (Tr., p. 137 et seq), which shows that there are substances known and styled "distilled oils," and that the term is applied to essential oils obtained by distillation.

If the decision of the Circuit Court is to be reversed, the Appellate Court must hold that coal tar in bulk is to be admitted free of duty, but all its distillates are subject to duty under paragraph 60 of the Act, as distilled oils. But even though it should be conceded that the article is a distilled oil, and may be properly so described, under a proper construction of paragraphs 60 and 443 of the Tariff Act of 1894, the merchandise is not subject to duty. In other words, it is appellee's contention that paragraph 60 in its general description of articles subject to duty is not more specific than paragraph 443 in its description of articles placed upon the free list. The case of Matheson vs. U. S., 71 Fed. Rep., 394, and cited in the opinion of the Board of General Appraisers, when properly understood, is not opposed to this view. That case does indeed hold that the phrase "acids used for medicinal, chemical or manufacturing purposes" found in Section 473 of the Tariff Act of 1890, when construed

with other sections of that Act, is to be regarded as a more particular expression of the legislative intention that such acids shall go free, than that they were to be subjected to duty under Section 19 of the same Act, which provided that all preparations of coal tar should be subject to duty. The Court in that case say:

> "Many acids are specifically subjected to duties by the Act" (naming them). "It is reasonable to suppose that Congress, having already subjected these acids to duty, had them under contemplation when it proposed to provide for the free entry of acids, and intending to purge the several provisions from repugnancy, used the words in question. We think the provision should be construed as intending to exempt from duty all acids used for medicinal, chemical or manufacturing purposes, except the ones that had already been specifically mentioned, and as to these, although they may be used for any of the specified purposes, they are otherwise provided for."

This of course is only the application of one of the fundamental rules for the interpretation of statutes, that particular and specific provisions will, in case of conflict, prevail over general words or general provisions of the same statute. And in accordance with this rule it is uniformly held by the courts that when a duty is imposed upon an article by a specific name, such designation will determine its classification, although there may be in the same Act of Congress other words of the same general description which would include the article in question. But that rule has no application whatever to paragraphs 60 and 443 of the Tariff Act of 1894. Section 60 provides in general terms that distilled oils, along with certain other named articles not otherwise specifically provided

for, shall be subject to a duty of 25 per cent ad valorem, while paragraph 443 provides that products of coal tar not specially provided for in the Act, shall be free from duty. The Court will observe that the words "distilled oils" in paragraph 60 is a mere descriptive phrase embracing within its description all oils produced by the process of distillation. It does not name any particular oil, but refers to many oils by a general description suggested by their mode of manufacture. The distinction between words of general description which might embrace a specific article and the specific mention of a particular thing is clearly pointed out in Solomon vs. Arthur, 102 U. S., 212, in which case the Court say:

> "The fact that certain goods belong to the class of mixed goods or of goods made of mixed material does not stamp them with the name of mixed goods, for the same description is applicable to many other kinds of goods, all having different names. It is not their name: it is merely their description."

Now, assuming for the moment that dead oil is a distilled oil, it is not specifically named anywhere in the Tariff Act of 1894, and the only ground upon which it is claimed that it is subject to duty is that it falls within the descriptive phrase found in Section 60, and which phrase is equally applicable to many other kinds of oil. But it is an undisputed fact in this case that dead oil is also a product of coal tar, and that it may just as properly be so described as to call it a distilled oil. The descriptive phrase "products of coal tar," referring as it does to many articles, is no more general than the other phrase "distilled oils." There are no other provisions in

the statute to which the Court can look for light in determining whether it was the intention of Congress that it should be classified under one section rather than the other. And this being so, under the rule laid down in Matheson vs. U. S., 71 Fed. Rep., 394, referred to in the opinion of the Board of Appraisers, the doubt must be resolved in favor of the importer. The Court in that case found, from a consideration of the whole statute, that the section admitting acids used for medicinal, chemical or manufacturing purposes free of duty, was more specific than the general provision found in another section subjecting preparations of coal tar to duty, but the Court added that if it was not correct in holding that one provision was more specific than the other "the question is one of doubt, and in cases of doubt in the construction of Customs Acts the Courts resolve the doubt in favor of the importer." And so upon either view the importer in that case was entitled to the judgment given by the Court.

But, even if the Court, after a consideration of all the evidence, in this case should find that this complex compound known as dead oil—a substance which is so unlike oil according to the public conception of oil that it will not float in water—even should the Court find that in point of fact this crude substance is a distilled oil, this finding of fact would be immaterial unless the Court could go further and say, as matter of law, that this substance is a distilled oil within the meaning of Section 60 of the Tariff Act. The real question to be determined after all is this: Did Congress intend by the use of the descriptive phrase distilled oils to include the substance known in commerce as "dead oil?"

The Tariff Act of 1883 (U. S. Statutes, 1881-83, vol. 22, p. 493 and 494) contains this provision:

> "Coal tar crude, 10 per cent ad valorem; coal tar, products of, such as naphtha, benzine, benzole, dead oil and pitch, 20 per cent ad valorem.
>
> "All preparations known as essential oils, distilled oils, rendered oils, etc., 25 per cent ad valorem."

See, also, the same distinctions made in the Tariff Act of 1897, U. S. Stats., 1897, pp. 151, 197, paragraphs 3 and 524.

Thus, Congress has recognized the distinction between oils commonly known as distilled oils and dead oil, and has shown that in its definition of the general descriptive phrase, "products of coal tar," it included the specific substance known as dead oil. In other words, Congress has declared that within the meaning of those Acts dead oil was to be deemed a product of coal tar, was to be subject to duty or not subject to duty as a product of coal tar and not as a distilled oil. So that even if it should be conceded that in a general sense the descriptive phrase distilled oil is broad enough to include the specific article known as dead oil, still it is apparent from the provisions just cited that Congress intended to use the phrase distilled oil in a more restricted sense and so as to exclude dead oil. There can be no doubt whatever that this is the true construction of that portion of the Tariff Act of 1883 just cited. Coming down to the later Act of 1890, Congress speaks generally of preparations of coal tar, but leaves out the clause found in the Act of 1883, which specifically

enumerates dead oil as one of its products. And so, also, it speaks generally of distilled oils. In this respect the phraseology of the Act of 1890 is adopted in the Tariff Act of 1894, the Act under consideration here. This Act, in paragraph 60, speaks generally of distilled oils and makes them subject to duty, and in paragraph 443 speaks generally of preparations and products of coal tar, and with certain exceptions not necessary to notice, provides that such products shall be admitted free of duty.

The tariff legislation commencing with the year 1883 is thus briefly reviewed in order to introduce a proposition of law—as a controlling rule for the interpretation of the particular statute under consideration,—that Congress, having in the Act of 1883 defined the phrase "products of coal tar" as intended to embrace the specific article known as dead oil, and having in the same Act used the phrase "distilled oils" as not intended to apply to dead oil, these phrases are to be given the same meaning in the Act under consideration. In other words, the phrase "distilled oil" is to be given the same restricted meaning which it had in the Act of 1883, and the phrase "products of coal tar" is to be given precisely the same meaning which it bore in the Act of 1883. The provision above quoted from the Act of 1883 amounts to a legislative interpretation of these two phrases, and under the well-settled and universal rule of construction the same meaning is to be given to the same phrases appearing in a later statute.

The same reason applies here which supports the other familiar rule that where an Act, or part thereof, which

has received a judicial interpretation, is re-enacted in the same terms, that construction or meaning must be considered to have the sanction of the Legislature unless the contrary appears.

23 Am. & Eng. Ency. of Law, p. 370.

Hence we have the general rule that when the Legislature of one State copies a statute of another State which in that State has received a judicial construction, the same construction is to be given to it in the State in which it is adopted. There is, however, still another reason for the rule invoked, and that is that the Tariff Act of 1893, in which the phrase "products of coal tar" is defined so as to include dead oil, as *in pari materia* with the Act now under consideration; and it is a familiar rule for the interpretation of statutes that all Acts *in pari materia* are to be construed in arriving at the meaning of a later statute in the series. The rule is thus stated (23 Am. & Eng. Ency. of Law, p. 315):

> "Expired and repealed Acts *in pari materia* with the statute to be construed may also be considered in the interpretation thereof * * * In construing a given Act the meaning of words and terms as used therein may be gathered from the consideration of other Acts *in pari materia* in which such words or terms were also used."

The proposition, broadly stated, is: That where two Acts of Congress are *in pari materia*, it will be presumed, in the absence of anything to show a contrary intent, that if the same word or phrase be used in both and a special meaning be given to such word or phrase in the

first Act, it was intended that it should receive the same interpretation in the later Act. The revenue laws of the United States, though made up of independent enactments, are to be regarded as one system. They are deemed to be *in pari materia* within the principle of the rule just announced. Thus in U. S. vs. Collier, 3 Blatchford, 325, it is said:

> "Generally a statutory enactment controls all prior usages and laws, and establishes the rule which governs the subject-matter, and its language is to be understood according to its natural and ordinary import * * * * (1 Kent's Commentaries, 7th ed., 462). The intention which forms the governing principle of the law is to be extracted from the entire enactment (Strode v. Stafford, 1 Brock., 162), and to ascertain the legislative intent Courts not only search all the provisions of the particular statute, but may look out of that to others *in pari materia*, or of a similar purport, especially in respect to the revenue laws, which, although made up of independent enactments, are regarded as one system (Wood v. U. S., 16 Peters, 342) in which the construction of any separate act may be aided by the examination of other parts and provisions which compose the system."

Now, then, for the application of these general rules to the case at bar. The Act of 1883 is a statute which is *in pari materia* with the one to be construed, and contains a legislative definition of the phrase "products of coal tar." The language of that Act is "coal tar, products of, such as dead oil," and other enumerated articles. In other words, that provision is to be construed just as if it said: "In using the phrase products of coal tar in this Act, it is the intention of Congress to include within that

general definition dead oil." Having given the phrase this definition, it is not necessary that such definition should be re-enacted in every subsequent statute. The definition may be omitted without changing the legislative meaning of the phrase. In other words, the phrase or word having been once defined, such word or phrase is to have the same meaning in every subsequent Act, unless there is other language in the subsequent Act which evinces an intention on the part of the Legislature to change the prior legislative interpretation of the word or phrase.

If these propositions are correct, it necessarily follows that the decision of the Circuit Court in this case must be affirmed. The Court is relieved from the necessity of determining the abstract proposition whether dead oil may be chemically or otherwise considered as a distilled oil, because, whether it is or not, Congress has said that dead oil shall be classed as a product of coal tar rather than as a distilled oil. Congress has said, without any reference to the scientific or chemical question involved, that for all practical purposes connected with the administration of the revenue laws of the government, dead oil shall be treated and classified as a product of coal tar.

There can be no doubt whatever as to the correctness of appellee's position upon this point, which is strengthened by the citation of an authority which seems to be conclusive. By the 23d Section of the Act of March 2, 1861, it was provided that "animals living of all kinds; birds, singing and other, and land and water fowls, should be admitted free of duty."

It will be observed that in the clause just quoted Congress speaks of animals, and it also speaks of birds. Now, in a later Act, passed May 16, 1866, it was provided "That on and after the passage of this Act there shall be levied, collected and paid on all horses, mules, cattle, sheep, hogs and other live animals imported from foreign countries a duty of 20 per cent ad valorem." In the later enactment it will be noticed the word "birds" is wholly omitted, and the general provision is that all live animals shall be subject to duty. In this state of the law the question arose as to whether canary birds were subject to duty under the latter Act. The case came before Judge Woodruff of the United States Circuit Court in New York, and was thoroughly considered by him, and decided adversely to the contention of the importer and adversely to the rule which is invoked in the case at bar. This case will be found reported in 7 Blatchford, 235. The opinion is instructive, as in it the learned Judge states with great force every consideration which can be urged against appellee's position here; and while in that case he conceded the correctness of the general rule that where the words of one Act *in pari materia* are given a restricted meaning, that the same meaning must ordinarily be given to the same words in a subsequent statute forming part of the same system, still he denied its application to the particular case before him. After quoting the particular provisions of the Act of 1861 and 1866, already referred to, he proceeds to state the contention of the importer, as follows:

> "It is therefore urged that inasmuch as Congress in this Act of 1861 named animals living of all kinds

and in the same section also mentioned singing birds, it must be concluded that it was the intention to recognize a restricted meaning of the word 'animals,' not including birds, and to introduce and sanction such restricted meaning as a definition of the terms 'living animals' and 'live animals' when used in the laws regulating duties on imports, and that hence, when Congress, in 1866, imposed a duty of 25 per cent upon all live animals and did not also mention birds, it should be held that it was intended that the latter are still to be exempt from duty."

And then proceeds:

"Unfortunately for the plaintiffs, the various Acts of Congress imposing duties upon imports are too full of examples of tautology and repetitions to warrant such an inference. They show very great and often quite needless particularity in enumerations accompanied by general terms plainly including the same things also mentioned in detail * * * The term 'all live animals' is clear, comprehensive and explicit. The addition of the designation of birds in a single instance in a former Act is a casual circumstance of too slight significance to warrant the Court in a practical interpolation in the later special statute of an exception to its plain import; and this is especially and conclusively forbidden, when, on recurrence to the same previous Act, and to many others on the same general subject, we find similar repetitions pervading them all through a long course of years where obviously there was no intent to introduce new definitions, or by merely giving some particulars to restrict the meaning of general terms."

There is force in his statement that the Revenue Acts of Congress are full of tautological expressions; and that the mere fact that Congress happened in one section to speak of animals and also of birds ought not to be held

as a legislative declaration upon the part of Congress that the words "live animals" found in a subsequent statute, where no mention is made of birds at all, should be given such a restricted meaning as not to include birds. This same case, however, was appealed to the Supreme Court of the U. S., and is found reported in 13 Wallace, page 162, and that Court, with the opinion of the learned Circuit Judge before it, and embodied in the argument of the Solicitor General, reversed the judgment of the Circuit Court, and in doing so, in the course of its opinion, said:

> "The Act of 1866 in its terms is comprehensive enough to include birds, and all other living animals endowed with sensation and the power of voluntary motion, and if there had not been previous legislation on the subject there might be some justification for the position that Congress did not intend to narrow the meaning of the language employed. If it be true that it is the duty of the Court to ascertain the meaning of the Legislature from the words used in the statute and the subject-matter to which it relates, there is an equal duty to restrict the meaning of general words whenever it is found necessary to do so in order to carry out the legislative intention. And it is fair to presume, in case a special meaning were attached to certain words in a prior Tariff Act, that Congress intended that they should have the same signification when used in a subsequent Act in relation to the same subject-matter.
>
> "This Act of 1861 was in force when the Act of 1866—the Act in controversy—was passed, and it will be seen that birds and fowls are not embraced in the term 'animals' and that they are free from duty, not because they belong to the class of 'living animals of all kinds,' but for the reason that they are especially designated. It is quite manifest that Congress, adopting the popular signification of the

> word 'animals,' applied it to quadrupeds, and placed birds and fowls in a different classification. Congress having, therefore, defined the word in one Act, so as to limit its application, how can it be intended that the definition shall be enlarged in the next Act on the same subject, when there is no language used indicating an intention to produce such a result? Both Acts are *in pari materia*, and it will be presumed that if the same word be used in both, and a special meaning were given it in the first Act, that it was intended that it should receive the same interpretation in the latter Act, in the absence of anything to show a contrary intention."

The case now before the Court is one which more strongly calls for the application of the rule announced in the case quoted from. In that case it was only by construction that the conclusion could be reached that the earlier Act of 1861 gave so restricted a meaning to the words "living animals" as to exclude birds; and this construction rested entirely upon the fact that that Act spoke of living animals and also of birds, and hence it was held that it must be presumed that Congress intended to use the word animals in so restricted a sense as not to include birds. Otherwise there would have been no use in inserting the word birds in the Act. But in the case at bar there is the Act of 1883, a precise, clear, unequivocal definition of the phrase "products of coal tar." There is a clear, precise, unmistakable declaration of Congress that the phrase "products of coal tar" within the meaning of that Act included dead oil, and must be classified as such; and there being nothing whatever in any later Act showing that Congress intended any different classification of this particular article, or intended that the

phrase "products of coal far" should be given any different construction, but, on the contrary, has emphasized its classification by the subsequent Act of 1897, above cited, the phrase must be given the same meaning in the statute of 1894. It has, in fact, acquired what may be styled a technical meaning in the revenue laws of the United States.

Appellant concludes his brief by calling the attention of the Court to the latter part of Section 4 of the Act, which provides

> "If two or more rates of duty shall be applicable to any imported article, it shall pay duty at the highest of such rates."

His contention is best answered by a quotation from the opinion of Judge Morrow, delivered in the Court below. He said:

> "It is further contended by counsel for the Government that under the latter part of Section 4 of the Act under consideration, which provides that: 'If two or more rates of duty shall be applicable to any imported article, it shall pay duty at the highest of such rates,' the 'creosote' in question must be subject to the duty of 25 per cent ad valorem provided for in paragraph 60. It is assumed, of course, that the merchandise in question is both a 'distilled oil' and a 'product of coal tar,' and that, therefore, the duty provided for 'distilled oil,' being the higher duty, should apply. The contention is untenable. In the first place, I am unable, as stated, to find, from the evidence, that the 'creosote' in question is a 'distilled oil.' In the second place, I do not regard the provision applicable to this case, for the simple reason that it cannot be said, strictly speaking, that there are two rates of duty which can apply to the mer-

chandise in question. If I am correct in holding that 'creosote' is a 'product of coal tar' within the meaning of paragraph 443, it then is not subject to any duty whatever, but is entitled to free entry. Under this condition of affairs, if the 'creosote' be subject to duty at all, there is, obviously, but one rate of duty which is applicable. As was aptly remarked by the Court, in Matheson & Co. v. United States, 71 Fed. R., 394, 395, 'as one (paragraph) imposes duty, and the other exempts from duty, it is obvious that Congress did not intend both provisions to apply to the same article.' "

It is respectfully submitted that the decision of the Circuit Court should be affirmed.

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